

HOUSE BILL NO. 391

INTRODUCED BY R. HAMILTON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR MEDIATION OF CRIMINAL PROCEEDINGS."

WHEREAS, the Montana Legislature recognizes the increasing burden on all levels of courts in the State of Montana; and

WHEREAS, mediation and other methods of alternative dispute resolution have proved effective in lessening the burden in other areas of the legal system; and

WHEREAS, many crimes are more amenable to mediation than to criminal prosecution.

THEREFORE, it is the intent of the Montana Legislature to allow judges of the District, Justices', City, and Municipal Courts to recommend mediation for certain criminal proceedings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Mediation. (1) At any time after the commencement of a prosecution and before the verdict, the court may, at its suggestion and with the consent of the parties or upon motion of both parties, refer the proceeding to mediation by a mediator chosen by the court.

(2) The proceeding may not be referred for mediation if the offense charged is:

- (a) deliberate homicide, as described in 45-5-102;
- (b) mitigated deliberate homicide, as described in 45-5-103;
- (c) intimidation, as described in 45-5-203;
- (d) partner or family member assault, as described in 45-5-206;
- (e) assault on a minor, as described in 45-5-212;
- (f) stalking, as described in 45-5-220;
- (g) aggravated kidnapping, as described in 45-5-303;
- (h) a sex crime, as described in 45-5-502 through 45-5-505 or 45-5-507;
- (i) endangering the welfare of children, as described in 45-5-622;
- (j) sexual abuse of children, as described in 45-5-625; or
- (k) ritual abuse of a minor, as described in 45-5-627.

(3) Any aspect of or issue in the proceeding may be the subject of the mediation, including but not limited to the charge, a plea bargain, or a recommended sentence.

(4) At any point during mediation, a party may withdraw from the mediation without penalty or sanction.

(5) This section does not prohibit the parties from engaging in traditional plea negotiations.

(6) "Mediation", as used in [sections 1 through 6], has the meaning provided in 26-1-813(1).

NEW SECTION. Section 2. Factors to use in determining appropriateness of mediation. In deciding whether mediation is appropriate, the court may consider:

(1) the nature of the offense;

(2) any special circumstances or characteristics of the defendant or any victim;

(3) whether the defendant previously participated in mediation in the current or a prior proceeding;

(4) whether it is probable that the defendant will cooperate with the mediator;

(5) the recommendation of any victim or victims;

(6) the recommendation of any involved law enforcement agency;

(7) whether a qualified mediator is available;

(8) the type of sentence, including any treatment, that the defendant would most likely be amenable to, whether the best interests of the defendant and the security of the public may require that the defendant be placed in secure detention or under supervision, and whether there are facilities available for treatment and rehabilitation of the defendant;

(9) whether there is evidence that the charged offense included violence or was otherwise committed in an aggressive and premeditated manner;

(10) the motivation for the commission of the charged offense;

(11) the age of the defendant and of any codefendant or victim;

(12) the previous history of the defendant, including any criminal history and any other prior antisocial behavior or pattern of physical violence;

(13) the sophistication and maturity of the defendant as determined by factors such as home, employment, school activities, emotional attitude, and pattern of living;

(14) whether any victim wishes to address the parties and mediator during mediation; and

(15) other matters that the court believes relevant.

NEW SECTION. **Section 3. Procedure following mediation.** (1) If mediation is successful, the

mediator shall inform the court of the results of the mediation and of any agreement reached.

(2) If mediation is unsuccessful or if one of the parties withdraws from the mediation, the mediator shall

notify the court and the prosecutor may proceed with the prosecution of the defendant.

NEW SECTION. Section 4. Privilege and confidentiality. Mediation communications and documents

are privileged and confidential and may not be disclosed in any judicial or administrative proceeding except

when:

(1) the parties to the mediation agree, in writing, to disclosure;

(2) a written agreement by the parties to mediate permits disclosure;

(3) a communication or document provides evidence of an ongoing or future criminal activity;

(4) disclosure is necessary to prevent an action or event that is reasonably likely to result in death,

serious bodily harm, or substantial injury to the financial interests or property of another;

(5) a communication or document is necessary to defend against a legal malpractice claim by the defendant against the defendant's attorney; or

(6) a communication or document is relevant to determining the existence of an agreement that resulted from the mediation or to the enforcement of an agreement.

NEW SECTION. **Section 5. Right to speedy trial.** Time spent in mediation may not be counted in

determining whether a defendant's right to a speedy trial has been violated.

NEW SECTION. Section 6. Costs. The mediation costs must be paid equally by the defendant and

the prosecution, except that if a defendant is eligible for a public defender, the prosecution shall pay the mediation costs.

NEW SECTION. Section 7. Codification instruction. [Sections 1 through 6] are intended to be

codified as an integral part of Title 46, chapter 1, and the provisions of Title 46 apply to [sections 1 through 6].

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